SIDLEY AUSTIN BROWN & WOOD LLP
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

CHICAGO
DALLAS
LOS ANGELES
NEW YORK
SAN FRANCISCO
SEATTLE

1501 K STREET, N.W.
WASHINGTON, D.C. 20005
TELEPHONE 202 736 8000
FACSIMILE 202 736 8711
www.sidley.com
FOUNDED 1866

BEIJING
HONG KONG
LONDON
SHANGHAI
SINGAPORE
TOKYO

DOCKET FILE COPY ORIGINAL

WRITER'S DIRECT NUMBER
(202) 736-8218

WRITER'S E-MAIL ADDRESS
pandros@sidley.com

RECEIVED
FEB - 6 2002
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

February 6, 2002

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

REDACTED – FOR PUBLIC INSPECTION

Re: *Application by Verizon New England Inc. et al. to Provide In-Region InterLATA Services in Vermont*
CC Docket No. 02-7 1

Dear Ms. Salas:

Enclosed for filing please find the Comments of AT&T Corp. ("AT&T") in connection with the above referenced matter. Pursuant to the Public Notice issued January 17, 2002, AT&T is submitting the original and four (4) copies of its comments and supporting exhibits in redacted form.

AT&T is also submitting under seal the portions of its comments that contain material designated as confidential pursuant to the Protective Order in this matter. These pages bear a legend indicating that they are confidential.

Please let me know if any additional information is required. Thank you.

Very truly yours,

Peter M. Andros

Peter M. Andros
Legal Assistant

No. of Copies rec'd 0+4
List A B C D E

Encl.

ORIGINAL

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Application of Verizon New England, Inc.,	)	
BellAtlantic Communications, Inc. (d/b/a	)	
Verizon Long Distance), NYNEX Long	)	CC Docket No. 02-7
Distance Company (d/b/a/ Verizon Enterprise	)	
Solutions), Verizon Global Networks, Inc., and	)	
Verizon Select Services, Inc., for	)	
Authorization to Provide In-Region InterLata	)	
Services in Vermont	)	

COMMENTS OF AT&T CORP.

David Carpenter
David L. Lawson
Ronald S. Flagg
R. Merinda Wilson
Christopher T. Shenk
SIDLEY AUSTIN BROWN & WOOD, L.L.P.
1501 K St., N.W.
Washington, D.C. 20005
(202) 736-8000

Mark C. Rosenblum
Lawrence J. Lafaro
James J.R. Talbot
AT&T CORP.
295 Basking Ridge, NJ
(908) 221-4481

Attorneys for AT&T Corp.

February 6, 2002

TABLE OF CONTENTS

FCC ORDERS CITED ii

DECLARATIONS iv

INTRODUCTION AND SUMMARY 1

I. VERIZON'S UNE RATES FOR VERMONT ARE NOT COST-BASED AND DO NOT SATISFY CHECKLIST ITEM TWO. 4

- A. Verizon's Non-TELRIC Vermont UNE Rates Cannot Be Justified By Comparisons To The Rates In New York Or Massachusetts. 7
- B. The Vermont Rates Cannot Be Presumed TELRIC-Compliant On The Basis Of The VPSB's Approval Of Those Rates. 9
  1. Verizon's Switching Rates Are Inflated By Inflated Switch Investment Estimates. 10
  2. Verizon's Switching Rates Are Inflated By Non-TELRIC Inputs. 13
  3. Verizon's Switching Rates Are Inflated By Overstated Loading Factors. 14
  4. Verizon's Switching Rates Are Inflated By Flawed Minutes Of Use Estimates. 15
  5. Verizon's DUF Charges Are Substantially Inflated By TELRIC Errors. 16
  6. The Fact That UNE Based Entry Is Not Economically Feasible In Vermont Is Another Indication That Verizon's Vermont Rates Are Inflated Above TELRIC Levels. 18

II. VERIZON'S VERMONT PERFORMANCE ASSURANCE PLAN CANNOT EFFECTIVELY DETER OR DETECT ANTICOMPETITIVE CONDUCT 20

III. VERIZON'S ENTRY INTO THE INTERLATA MARKET IS NOT CONSISTENT WITH THE PUBLIC INTEREST. 24

- A. InterLATA Authorization Is Not In The Public Interest Unless The BOC's Local Markets Are Irreversibly Open To Competition. 25
- B. Verizon Maintains Monopoly Power Over Residential Service. 26
- C. The Record Demonstrates That Verizon's Local Residential Markets Remain Closed To UNE- and Facilities-Based Competition. 32
- D. Approving Verizon's Section 271 Application Before Local Markets Are Open Will Impair Competition. 40

CONCLUSION 45

FCC ORDERS CITED

SHORT CITE	FULL CITE
Connecticut 271 Order	Memorandum Opinion and Order, *Application of Verizon New York, Inc. et al., for Authorization to Provide In-Region InterLATA Services in Connecticut*, CC Dkt. No. 01-100 (rel. July 20, 2001)
KS/OK 271 Order	Memorandum Opinion and Order, *Joint Application of SBC Communications, Inc., et al, for Provision of In-Region InterLATA Services in Kansas and Oklahoma*, 16 FCC Rcd. 6237 (2001)
Massachusetts 271 Order	Memorandum Opinion and Order, *Application of Verizon New England Inc. (d/b/a Verizon Long Distance) et al For Authorization to Provide In-Region InterLATA Services in Massachusetts*, 16 FCC Rcd. 8988 (2001)
Michigan 271Order	Memorandum Opinion and Order, *Application of Ameritech Michigan Pursuant to Section 271 to Provide In-Region, InterLATA Services in Michigan*, 12 FCC Rcd. 20543 (1997)
NY 271 Order	Memorandum Opinion and Order, *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd. 3953 (1999)
Pennsylvania 271 Order	Memorandum Opinion and Order, *Application of Verizon Pennsylvania Inc. et al. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138 (rel. Sept. 19, 2001)
Texas 271 Order	Memorandum Opinion and Order, *Application by SBC Communications Inc., et al Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, 15 FCC Rcd. 18354 (2000)
Local Competition Order	First Report and Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd. 15499 (1996), *aff'd in part and vacated in part by Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir.

SHORT CITE	**FULL CITE**
	1997), *aff'd in part and rev'd in part by AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999)
UNE Remand Order	Third Report and Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd. 3696 (1999)

DECLARATIONS

A. Michael Lieberman	Pricing
B. Catherine Pitts	Pricing
C. Michael Kalb	Performance Measures

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of Application of Verizon New England, Inc., BellAtlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a/ Verizon Enterprise Solutions), Verizon Global Networks, Inc., and Verizon Select Services, Inc., for Authorization to Provide In-Region InterLata Services in Vermont	)	CC Docket No. 02-7

COMMENTS OF AT&T CORP.

Pursuant to the Commission's Public Notice, AT&T Corp. ("AT&T") respectfully submits these comments in opposition to the application of Verizon for authorization to provide in-region, interLATA services in Vermont.

INTRODUCTION AND SUMMARY

According to Verizon's own data, only three tenths of one percent of all residential Vermont lines are serviced by competitive local exchange carriers ("CLECs"). The barely measurable competitive entry in Vermont is not due to any lack of interest of competitors whose livelihood depends on expanding service offerings to new geographic areas. Rather the lack of competitive entry in Vermont is attributable to the fact that Verizon's Vermont rates are far above TELRIC levels and create a price squeeze that makes entry into Vermont economically infeasible. Verizon does not even attempt to produce evidence that its Vermont rates are appropriately cost based. Verizon instead urges the Commission simply to presume that its rates are TELRIC-compatible because the Vermont Public Service Board ("VPSB") has approved them and because they compare favorably to rates that the New York commission set in 1997 and recently determined are "unwarrantedly high" and, if left in effect, would "impede the development of competition." NYPSC Order at 8. Neither fact can satisfy Verizon's burden of proof in this proceeding.

As demonstrated in Part I below, the VPSB conceded that it never even had access to Verizon's cost studies, making it impossible for it to make any reasoned findings that Verizon's rates comply with TELRIC principles. And an examination of even the limited materials that Verizon has made available confirms that its rates could not possibly be TELRIC-compliant. Nor can Verizon rely upon a comparison of its Vermont rates to the superceded 1997 New York rates. As the Commission expressly ruled in the *Massachusetts 271 Order* (¶ 29) "[i]f the New York Commission adopts modified UNE rates, future section 271 applicants could no longer demonstrate TELRIC compliance by showing that their rates . . . are equivalent to or based on the [former] New York rates."

Because there is no justification for presuming that Verizon's Vermont rates are TELRIC-compliant, and because Verizon has made no evidentiary showing that its rates comply with TELRIC principles, Verizon has clearly failed to satisfy its burden of proving that its rates comply with Checklist Item 2.

Verizon's Vermont rates also violate Checklist Item 2 because they are discriminatory. *See* §§252(d)(1), 271(c)(2)(B)(ii) & (d)(3)(A) & (2). The Supreme Court has held that even if a utility's wholesale rates are within the range of reasonable cost-based rates, the rates are "discriminatory" if they preclude wholesale purchasers from economically competing with the utility's retail services to any class of customers. *See FPC* v. *Conway Corp.*, 426 U.S. 271, 278-79 (1976). As demonstrated in the declaration of Michael Lieberman, Verizon's Vermont rates create a price squeeze that precludes economically feasible local residential entry in Vermont. Verizon's Vermont rates, therefore, are discriminatory and violate Checklist Item 2.

Part II explains that there is no sound basis for Verizon's assertion that it is subject to self-executing mechanisms in Vermont that provide sufficient incentives to assure its compliance with statutory obligations after Section 271 entry. The Vermont Performance Assurance Plan ("Vermont PAP") on which Verizon relies is wholly insufficient to deter or detect anticompetitive conduct. Unlike the performance enforcement plans in New York, Connecticut, Massachusetts, Texas, Kansas and Oklahoma which compensate CLECs that are harmed by performance failures associated with all or the vast majority of measures included in those plans, the Vermont PAP provides no compensation to CLECs for performance failures associated with scores of measures. A performance remedy plan cannot be effective in deterring anticompetitive conduct if it can thwart competition by financially crippling CLECs that are harmed by a BOC's discriminatory conduct. The Vermont PAP has just such a perverse effect. In addition, the Vermont PAP cannot detect discrimination effectively because it employs a flawed statistical methodology that is strongly biased in Verizon's favor. Because the Vermont PAP uses an improper confidence interval, there is an increased risk of a Type II error (a finding of parity where it does not exist). And because the Vermont PAP cannot and does not effectively deter or detect anticompetitive conduct, Verizon cannot reasonably rely on the plan as evidence that it will provide nondiscriminatory support to CLECs after Section 271 relief.

As shown in Part III, Verizon's Vermont application should also be rejected because approval would contravene the public interest. Section 271 makes clear, and this

Commission has acknowledged, that even where (unlike here) a BOC has fully implemented each of its checklist obligations, interLATA authorization is not in the public interest if other relevant factors demonstrate either that its local markets are not open to competition or that they will not remain open to competition. It is plain that the local market in Vermont is not yet open to competition, and that it will remain closed to competition unless and until Verizon and the VPSB take affirmative steps to eliminate the remaining significant barriers to entry. Not only do competitors today serve only a paltry number of customers, but the competitors on which Verizon relies have either exited the local market or are in extreme financial distress. Allowing Verizon to enter the long-distance market while its local markets remain closed to competition through inflated UNE rates would unquestionably harm consumers and competition in the provision of end-to-end services.

For the foregoing reasons, Verizon's application should be denied.

I. VERIZON'S UNE RATES FOR VERMONT ARE NOT COST-BASED AND DO NOT SATISFY CHECKLIST ITEM TWO.

Verizon provides *no* evidence that its Vermont rates are TELRIC-compliant. Instead, Verizon asserts that the Commission need not examine its Vermont rates because they were adopted by the state commission and because (according to Verizon) they compare favorably to New York rates. *See* Verizon Br. at 82-83 ("there is no need to examine the manner in which the state commission applied TELRIC, or to examine the inputs that its used"). Neither of these assertions withstands scrutiny or remotely satisfies Verizon's burden of demonstrating that its Vermont rates comply with Checklist Item 2.

Verizon first asserts that its Vermont rates can be presumed TELRIC-compliant based on comparisons to the rates adopted by the New York Public Service Commission

("NYPSC") in 1997 and to the rates in Massachusetts, which are based on the 1997 New York rates. The Commission's precedents make clear, however, that Verizon can no longer rely on this shortcut "benchmark" because the NYPSC has now determined that the 1997 rates do not reflect today's costs. Accordingly, neither the 1997 New York rates nor the Massachusetts rates that were approved solely on the basis of comparison to the 1997 New York rates may be used as benchmarks, because the NYPSC has ruled that the 1997 rates do not reflect TELRIC costs today. *See Massachusetts 271 Order* (¶ 29) ("[i]f the New York Commission adopts modified UNE rates, future section 271 applicants could no longer demonstrate TELRIC compliance by showing that their rates . . . are equivalent to or based on the [former] New York rates").

Nor does the fact that the VPSB adopted Verizon's rates based on hearings held in 1997 remotely mean that the VPSB did (or could) properly find Verizon's rates to be TELRIC-compliant today. As an initial matter, the timing of the VPSB hearings based on Verizon cost models and inputs that the NYPSC has recently found are not reflective of TELRIC costs today is powerful evidence that the Vermont rates also could not be reflective of today's costs. In any event, the record below confirms that the VPSB had no possible basis to conclude that the Vermont rates were TELRIC-compliant even as of the date of the 1997 hearings. As explained by the Vermont Hearing Officer, Verizon's "SCIS model [used to compute switching rates] is proprietary and, therefore, cannot be 'opened up' for examination by regulators and competitors" and "the fact that the SCIS model is fundamentally unknowable raises . . . concerns." *VPSB Feb. 4, 2000 Order* at 23; *see also id.* ("without rigorous testing, one cannot be altogether confident that its outputs, given a reasonable set of inputs, are themselves reasonable"). Having never even seen Verizon's switching cost studies, the VPSB obviously could not have rationally determined that those cost studies comply with TELRIC principles. And, as even a cursory examination of the limited materials Verizon has produced confirms, the Verizon switching cost studies were, in fact, riddled with very significant TELRIC errors.

Verizon's daily usage file ("DUF") rates are also vastly overstated. Despite the fact that Verizon's DUF rates should be nearly identical, its Vermont DUF charges are as much as *twice* those in other Verizon states. As explained in the attached declaration of Michael Lieberman, Verizon's inflated DUF rates can be traced, at least in part, to the fact that Verizon's Vermont DUF rates, like Verizon's Vermont switching rates, are based on outdated 1995/1996 data.

Yet further proof that Verizon's Vermont rates fail to comply with Checklist Item 2 is the fact that residential margins for UNE-P entrants are *negative* for almost half of the state. State-wide local UNE-based entry is not remotely possible in Vermont because the miniscule margins that are available to new local UNE-P entrants do not even come close to covering the carriers' internal costs of providing local service in Vermont. That means that Verizon's Vermont rates are discriminatory in violation of Checklist Item 2. *See FPC v. Conway Corp.*, 426 U.S. 271, 278-79 (1976) (holding that even if a utility's wholesale rates are within the range of reasonable cost-based rates, the rates are "discriminatory" if they preclude wholesale purchasers from economically competing with the utility's retail services to any class of customers); 47 U.S.C. §§ 252(d)(1), 271(c)(2)(B)(ii) & (d)(3)(A)).

Thus, Verizon's application offers no cognizable evidence that its rates are TELRIC-compliant. On this record, Verizon has plainly failed to satisfy its burden that its Vermont rates comply with Checklist Item 2, and its application should, therefore, be denied.

A. Verizon's Non-TELRIC Vermont UNE Rates Cannot Be Justified By Comparisons To The Rates In New York Or Massachusetts.

Verizon claims that its Vermont rates should be presumed TELRIC-compliant because they are reasonably close (on a cost-adjusted basis) to its former New York rates and its existing Massachusetts rates (which were approved solely on the basis of comparison to the former New York rates). *See* Verizon Br. at 82-97. That benchmarking analysis, however, is based on outdated New York rates that the NYPSC has since replaced with substantially lower rates.[1] Benchmarking could therefore only serve to confirm that Verizon's Vermont rates are far too high.

There can be no serious dispute that the fact that the NYPSC has replaced Verizon's outdated and inflated 1997 New York rates precludes Verizon from relying on the old New York rates (or the Massachusetts rates) to justify Verizon's Vermont rates. The *Massachusetts 271 Order* explicitly held that once the NYPSC concluded its then-pending proceeding and ordered the adoption of superceding lower rates – as it now has – Verizon would lose the ability to justify switching rates in other states by reference to the NYPSC's 1997 switching rates. The Commission's Order states that "[i]f the New York Commission adopts modified UNE rates, future section 271 applicants could no longer demonstrate TELRIC compliance by showing that their rates in the applicant states are equivalent to or based on the current [1997] New York rates, which will have been superceded." *Massachusetts Order* ¶ 29; *accord* 16 FCCR at 9143 (Statement of Chairman Powell). Moreover, the Commission further stated that "a decision by the New York Commission to modify these UNE rates may" cause

[1] *See* Order on Unbundled Network Element Rates, *Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements*, Case 98-1357 (January 28, 2002).

Verizon to fall out of compliance with § 271 and require the Commission to exercise its authority under § 271(d)(6) to revoke or suspend Verizon's long distance authority or to order it to correct the deficiencies. *Massachusetts Order,* ¶ 30; *see* ¶ 31 n. 78 (future NYPSC order could result in "Verizon falling out of section 271 compliance in Massachusetts."). As Chairman Powell explained, there can be "situations" in which such an NYPSC decision would mean that Verizon has "ceased to meet [one] of the conditions required for [section 271] approval" under § 271(d)(6) and in which the NYPSC order "would have the practical effect of requiring Verizon to find a new cost-based rates for switching." *Massachusetts 271 Order*, Statement of Chairman Powell, at 2.

In prior Section 271 Applications, Verizon has contended that because the NYPSC Order was issued after its Section 271 application was filed, the Commission cannot consider the NYPSC Order. No such argument can even be attempted here, because the Commission's rules specifically provide that that additional evidence may be submitted within the first 20 days after the filing of the application. *Michigan 271 Order* ¶ 51. Verizon's Application was filed on January 17, 2002; the NYPSC adopted the reduced rates only 11 days later, on January 28, 2002. In addition, as AT&T has explained in detail in the Rhode Island proceeding, Verizon could not evade the Commission's common sense holding that a benchmark shortcut ceases to be available when the rates in question have been found by the state commission that adopted them to be too high even if this "20 day" rule was not implicated.[2] Indeed, as recognized in the *Massachusetts 271 Order*, Verizon's approach would lead to the absurd result of approval of a deficient application followed by an immediate § 271(d)(6)

[2] *See Ex Parte* Letter from Robert W. Quinn, Jr., AT&T, to William F. Caton, Acting FCC Secretary, CC Docket No. 01-324 (filed Feb. 1, 2002).

obligation to revoke or suspend the authorization to reflect the fact, with the benchmark rates upon which authority was granted now superceded, the BOC ceases to satisfy the requirements of § 271. *See Massachusetts 271 Order* ¶ 30; Statement of Chairman Powell, at 2.

B. The Vermont Rates Cannot Be Presumed TELRIC-Compliant On The Basis Of The VPSB's Approval Of Those Rates.

Verizon's only other argument to support its claim that its Vermont rates can be presumed TELRIC-compliant is that the VPSB adopted its Vermont rates after holding hearings in 1997. However, the fact that the VPSB adopted Verizon's rates based on hearings held in 1997 does not remotely mean that the VPSB did (or could) properly find Verizon's rates to be TELRIC-compliant today. In fact, the VPSB could not have found Verizon's rates to be TELRIC-compliant even for 1997. As explained by the Vermont Hearing Officer, Verizon's "SCIS model [used to compute switching rates] is proprietary and, therefore, cannot be 'opened up' for examination by regulators and competitors" and "the fact that the SCIS model is fundamentally unknowable raises . . . concerns." *VPSB Feb. 4, 2000 Order* at 23; *see also id.* ("without rigorous testing, one cannot be altogether confident that its outputs, given a reasonable set of inputs, are themselves reasonable"). Therefore, the VPSB, without ever having seen Verizon's switching cost study, could not possibly have determined that those cost studies comply with TELRIC principles. And there are, in fact, numerous TELRIC errors in Verizon's costs study.

A straightforward comparison of Verizon's Vermont rates to those recently adopted in New York shows that there is something seriously wrong with the way that Verizon's

Vermont switching (and total non-loop) rates were computed.[3] Verizon's Vermont recurring switching rates are more than 100% *higher* than those adopted by the NYPSC on January 28, 2002. That rate difference cannot be explained by cost differences. According to the Commission's Synthesis Model Verizon's Vermont switching costs are at most 17% higher than those in New York. *See* Lieberman Decl. ¶ 26. On a cost adjusted basis, therefore, Verizon's recurring switching rates are well above those that the NYPSC recently determined to be TELRIC-compliant for New York. As explained in the declarations of Catherine Pitts and Michael Lieberman, there are numerous TELRIC-errors that lead to these substantially inflated switching rates.[4]

1. Verizon's Switching Rates Are Inflated By Inflated Switch Investment Estimates.

Correct switch investments are essential in the calculation of TELRIC-based rates for unbundled switching. *See* Pitts Decl. ¶ 6. Verizon's Vermont cost studies, however, include data for switch investment costs that often cannot be verified due to the closed nature of Verizon's cost model. *See id.*[5] Even worse, the data for switch investment cost that is verifiable

---

[3] The New York non-loop rates are themselves, in many respects, too high.

[4] Verizon is required to develop cost-based rates for *each element*. Therefore, for determining whether switching cost differences justify rate differences, it is appropriate to compare the costs of switching-related elements (as opposed to all non-loop elements). In any event, even a comparison of the costs of all non-loop elements shows that the difference between Verizon's Vermont and New York rates are not explained by costs. Whereas Verizon's Vermont non-loop rates are about twice those in New York, its non-loop costs are only 57 percent higher in Vermont than in New York. *See* Lieberman Decl. ¶ 27.

[5] Because Verizon used smaller discounts in other states such as New Hampshire and Maine, it is critical to be able to verify that the model used the proper discount levels to develop the correct switch investments costs. To be sure, the VPSB did order Verizon to refile its switch cost study using corrected discounts to reflect new switch purchases. However, the same fundamental defect remained: no one, including the VPSB, could validate whether Verizon had followed the

is plainly outdated and inaccurate. *See id.* As a consequence, the switch investment cost per line in Vermont is about $160, significantly higher than the $105 per line adopted by the New York PSC.

Verizon's Switching Rates Are Based On Outdated Data And Incorrect Switch Discounts. The data on Verizon's switch investment is at least five years old. Given the rapid changes in switch prices and technologies that have occurred in that time, any study that is based on data that stale cannot be considered to be forward-looking or to comply with TELRIC. *See* Pitts Decl. ¶¶ 9-10. As detailed in the declaration of Michael Lieberman (¶ 28), publicly available data shows that Verizon's switching costs have declined by more than 40 percent since 1996.

Another indication that there is something seriously wrong with Verizon's Vermont switching rates is that, despite the facts that Verizon's New York switch investment estimates reflect some more expensive growth/upgrade switch prices and that the Vermont switch investment is purportedly based solely on more efficient new switch discounts, as noted above, Verizon's Vermont switching investment is claimed to be $160 compared to $105 in New York. *See* Pitts Decl. ¶ 11. Even allowing for geographic/density differences between New York and Vermont, it is inconceivable that new switches in Vermont could cost significantly more than New York switches priced at growth discounts and the Commission's Synthesis Model suggests that the difference should be less than 20 percent. *See id.*; Lieberman Decl. ¶¶ 21, 26.

---

its directive because neither the SCIS model, nor a comprehensive set of model input values, were ever made available. *See* Pitts Decl. ¶ 8.

Even if Verizon did use the correct discount input from its switch vendor contracts for Vermont (which it appears it did not) those discounts are substantially lower than the discounts Verizon currently receives using a competitive bid process. *See* Pitts Decl. ¶ 12. The discounts that Verizon currently receives from competitive bids are the most appropriate source for estimating the price of new switches. Verizon has elsewhere shown that the prices it pays for Nortel switches (based on either new switch discounts or growth discounts) is approximately $88 per line. *See id.* Verizon, however, included in its Vermont study only the more expensive old Lucent switches, reflecting the embedded switch deployment in Vermont. *See id.* That is not consistent with TELRIC methodology. Although TELRIC requires use of an incumbent's existing wire center, it certainly does not require that a specific manufacturer's switch be replicated in the wire centers. To the contrary, it requires that the lowest-cost technology be used, not the embedded network technology. In New York, for example, the embedded switch manufacturer mix was not used, but instead Verizon assumed a "forward-looking" fifty-fifty meld of Lucent and Nortel switches. *See id.* In these circumstances, where Verizon receives lower prices from Nortel, TELRIC mandates use of those lower prices, regardless of whether Lucent switches are actually in place in Vermont.[6] *See id.*

Verizon also appears to have improperly reduced its switch investment costs in response to the VPSB's order. *See* Pitts Decl. ¶¶ 14-15. The VPSB's changes resulted in a total switch investment per line reduction of almost 60 percent: from $400 to $160. *See id.* This

---

[6] Verizon's history with respect to its switch discount figures provides another reason to question its Vermont switch discounts. Verizon's interpretation of its new switch discount as provided in its switch vendor contracts was determined to be incorrect in New York. *See* Pitts Decl. ¶ 14. There is every reason to believe that this same error was also made in Vermont, resulting in overstated switch prices. The contracts available to Verizon at that time and that governed the discounts are still in force today and will not expire until 2003. *See id.*

overall decline in switch investment plainly should have been reflected, in roughly the same proportion, in *all* the revised rates for unbundled switching. *See id.* That did not occur, and there is no explanation for this discrepancy. *See id.* Despite the overall decline in per line investment cost of about 60 percent, the rate for an ISDN BRI port decreased only 40 percent, and the rate for the ISDN trunk PRI decreased 52 percent. *See id.* Likewise, the minute of use rates for switching dropped only 50 percent. *See id.* The fact that the minute of use rate declined less than overall switch investment is especially troubling given that Verizon was also directed to project switching minutes over the entire period of demand, which would have been expected to lower further the minute of use rate element. *See id.*

2. Verizon's Switching Rates Are Inflated By Non-TELRIC Inputs.

In addition to its errors relating to switch investment, Verizon also made fundamental errors in applying TELRIC methodology to its data inputs. *See* Pitts Decl. ¶ 16. Once again, the closed nature of Verizon's study makes it impossible for the Board or interested parties to fully analyze Verizon's data inputs. But remarkably, there are errors even in the few "sample" inputs that Verizon did provide. *See id.* These errors not only further inflate the rates for unbundled switching, but also destroy any basis for believing that Verizon's other undisclosed inputs comply with TELRIC. *See id.*

Digital Loop Carrier. In its Vermont Workpapers, Verizon provided sample inputs for line types and line fill factors. *See* Pitts Decl. ¶¶ 17-18. Neither of these inputs are forward-looking, and both result in excessive unbundled switching rates. With respect to line types, Verizon assumed approximately 90 percent of the lines are integrated digital loop carrier (IDLC) lines. The type of IDLC carrier that is assumed is critically important to deriving a

TELRIC-based rate for switching. In particular, the cost and engineering efficiency of GR-303 (formerly called TR-303) is well known and widely accepted in the industry. *See id.*

Nevertheless, *none* of the lines in Verizon's Vermont study were modeled as forward-looking GR-303 IDLC lines. *See id.* Instead, Verizon assumed all of the IDLC lines would employ older technology based on TR-008 standards (specifically Verizon used TR-008 Mode I). Verizon's cost study assumption that approximately 90 percent of the lines in Vermont are on less-efficient IDLC produces switch UNE rates that exceed TELRIC. *See id.*

Fill Factors. In Vermont, Verizon's data shows that it assumes only 72 percent utilization on the IDLC lines in its study and only 81 percent utilization on analog lines. And the effective utilization levels are even lower. *See* Pitts Decl. ¶ 19. That is because Verizon's cost study adds costs for "breakage," which occurs when equipment is purchased in modular units and the demand does not use all the capacity of the modular unit. *See id.* In other Verizon states, Verizon accounts for the SCIS-computed breakage and adjusts its utilizations accordingly, but this was not done in Vermont. *See id.* When the SCIS breakage is taken into account, the effective utilizations are only 56 percent for IDLC lines and 68 percent for the analog lines, thereby grossly inflating the cost of UNE port rates. Appropriate forward-looking line port utilizations should be much higher. *See id.* For example, the Synthesis Model uses a 94 percent fill factor. *See id.*

3. Verizon's Switching Rates Are Inflated By Overstated Loading Factors.

In addition to its flawed data inputs, the factors chosen by Verizon to adjust switch costs to account for certain engineering, furnishing and installation ("EF&I") costs are deeply flawed, and result in a switch investment that is increased by more than 54 percent. *See* Pitts Decl. ¶¶ 20-22.

To develop its prices for unbundled switching, Verizon applies certain "factors" to the switch investment cost to account for certain types of costs associated with running a switch. *See* Pitts Decl. ¶ 21. If these factors are inflated, then that directly drives up the switch investment cost, which in turn raises the price for unbundled switching. For digital switch EF&I, Verizon-Vermont used a factor of 54.24 percent, a figure that is grossly out-of-line with those used by Verizon in other states in its territory. *See* Pitts Decl. ¶ 21. By contrast, in New York that factor is 43.26 percent, and in Massachusetts, it was 40.27 percent. *See id.* And BellSouth has proposed a ten percent EF&I factor. *See id.* Moreover, an average 10 percent EF&I factor was used during the Open Network Architecture (ONA) direct case filings by multiple Regional Bell Operating Companies (RBOCs). *See id.* The effect of the inflated EF&I factor is highly significant: reducing Vermont's EF&I factor by just 20 percent to the already inflated New York factor of 43.26 would reduce the UNE switch rates roughly seven percent. *See id.*

Verizon-Vermont's power factor also vastly overstated. Verizon's applies a .1092 power factor in Vermont. *See* Pitts Decl. ¶ 22. That is almost twice that of New York (.0516) and Massachusetts (.0586). Reducing Verizon-Vermont's power factor to the region-wide factor would result in approximately a four percent decline in switch UNE rates. *See id.*

4. Verizon's Switching Rates Are Inflated By Flawed Minutes Of Use Estimates.

Another highly significant error in Verizon-Vermont's cost methodology relates to its minutes of use ("MOU") rate elements. *See* Pitts Decl. ¶¶ 23-24. To calculate a MOU rate element for unbundled switching, Verizon initially calculated the cost for a "busy-hour," *i.e.*, the peak usage. *See id.* Those busy-hour minute of use costs are then converted to a cost for "any hour of the day" by multiplying a 10 percent busy hour to total business day (BHTD) ratio and then dividing by 252 business days in a year. *See id.* This calculation ensures that Verizon will recover 100 percent of the costs from traffic that occurs on business days. *See id.*

This calculation may be acceptable for business-related service cost studies, such as Centrex, but it is entirely inappropriate for a wholesale rate element that will be used by residential and business customers. *See id.* The revenue received from the minute of use rate element in the remaining 113 days of the year would be pure profit to Verizon because its has calculated that rate element to ensure that it fully recovers its costs from the traffic occurring on business days. *See id.* Instead of Verizon's method, the proper approach is plainly to divide the peak period costs over all 365 days per year, because the switch will in fact be used all of the days of the year. *See id.*

5. Verizon's DUF Charges Are Substantially Inflated By TELRIC Errors.

Verizon's Vermont daily usage file ("DUF") charges, which are often considered part of switching rates, also exceed those that any reasonable application of TELRIC principles would have produced. *See* Lieberman Decl. ¶¶ 29-31. The DUF charge is a fee that Verizon charges CLECs for information regarding CLECs' usage. *See id.* ¶ 29. CLECs use that information to verify the accuracy of BellSouth bills and as a basis for billing their own customers.

Because Verizon has not submitted its Vermont cost studies in this proceeding – or in any state proceeding – it is impossible to determine exactly how Verizon computed its DUF rate. However, Verizon has provided work papers in New York that explain how its New York's

DUF rates were computed. *See* Lieberman Decl. ¶ 29. And as explained in the declaration of Michael Lieberman (¶ 29), Verizon's DUF rates rely on data that are generally regional (not state-specific) in nature. Therefore, the New York workpapers are useful for assessing whether Verizon's Vermont DUF rates comply with TELRIC.

The New York workpapers show that DUF rates are computed by summing processing, transmission and product management costs, and then grossing up those costs to account for overhead attributable to providing DUF. *See id.* For Vermont, all of these data would be based on 1995/1996 data – the years on which all data in Verizon's Vermont cost studies are based. *See id.* Verizon itself has conceded that it has enjoyed substantial savings since 1995/1996 in overhead, management and other costs. One source of those cost savings are the various mergers engaged in by Verizon since then. *See also* Lieberman Decl. ¶ 31. In addition, the cost of the computer equipment used to collect and furnish DUF have also decreased since the 1995/1996 time period. *See id.*

It is not surprising, therefore, that Verizon's DUF rates substantially exceeds those in other states. Verizon's Vermont DUF rates are more than 11 times higher than those in Pennsylvania and more than 7 times higher than those adopted by the NYPSC for New York on January 28, 2002.[7] *See* Lieberman Decl. ¶ 30. Verizon offers no justification or explanation for its inflated DUF rates. Its application, therefore, violates Checklist Item 2 and should be denied.

---

[7] Verizon has eliminated the DUF charge in Massachusetts.

6. The Fact That UNE Based Entry Is Not Economically Feasible In Vermont Is Another Indication That Verizon's Vermont Rates Are Inflated Above TELRIC Levels.

Yet further confirmation that Verizon's Vermont rates Violate Checklist Item 2 is the fact that those rates preclude profitable residential local UNE-platform entry in Vermont. Section 271 bars the Commission from granting Verizon long distance authority unless the Commission finds (1) that the UNE rates are "nondiscriminatory" as well as cost-based (§§ 252(d)(1), 271(c)(2)(B)(ii) & (d)(3)(A)) and (2) that the grant of the application is in the "public interest." § 271(d)(3)(C). The Supreme Court has held that even if a utility's wholesale rates are within the range of reasonable cost-based rates, the rates are "discriminatory" and "anticompetitive" if they fall at the high end of that range and if they preclude wholesale purchasers from economically competing with the utility's retail services to any class of customers. *FPC* v. *Conway Corp.*, 426 U.S. 271, 278-79 (1976). Thus, if Verizon's high-end UNE rates foreclose UNE purchasers from economically providing residential competition, Verizon is engaged in "discrimination" and has not satisfied checklist item two. And because § 271 categorically bars long distance authorization unless checklist item two has been "fully implemented," Verizon's arguments about the availability of resale or facilities-base entry are irrelevant in that context.

A straightforward margin analysis confirms that, at current prices, residential UNE-based competition is not viable in Vermont. The Commission has emphasized that "efficient competitive entry into the local market is vitally dependent upon appropriate pricing of the checklist items." *Michigan 271 Order* ¶ 281. In nearly half of the state, a new entrant would lose money on each residential line it serves, even if its internal costs of running its business are excluded – *i.e.*, new competitors' gross margins in those zones are *negative*. *See* Lieberman

Decl. ¶¶ 32-47. Moreover, statewide average gross margins for UNE-based competitors in Missouri are not remotely sufficient to cover a new entrants internal costs of running a business. *See id.* Even a perfectly efficient CLEC, therefore, could not profitably compete to provide local residential service in Vermont.[8]

Verizon has stated that the fact that its UNE-platform rates preclude residential competitive entry is irrelevant because competitors have other modes of entry available to them. *Verizon Br.* at 91. According to Verizon, carriers can profitably provide local customers in Vermont resale or UNE-L offerings. *See id.* Verizon is wrong.

It is not economically feasible for entrants to provide local resale services in Vermont. The margins available to resale entrants in Vermont are a slim $3.95/line/month. *See* Lieberman Decl. ¶ 59. That is not remotely sufficient to cover the entrants internal costs of entry. *See id.* With respect to facilities-based entry, the only alternative to UNE-P would be UNE-loop (or "UNE-L") in which entrants would attempt to provide residential service by leasing unbundled loops from Verizon and combining them with the entrants' own switches to provide service. The Commission has already recognized that UNE-L based local entry is generally uneconomic because entrants cannot rationally invest in switches until they have used UNE-P to build up a customer base. *See UNE Remand Order* ¶¶ 254-258. In addition, Verizon

---

[8] Verizon has also submitted two "margin analyses" for Vermont. The margin analyses in Verizon's Comments, however, are lumped together in undefined "other" categories, are based on figures that have no identifiable sources and appear to have been pulled out of thin air. *See* Lieberman Decl. ¶¶ 48-57. Indeed, Verizon has offered only a cursory one page attachment with no explanations whatsoever. *Id.* By contrast, the margin analysis submitted here by Micahel Lieberman provides specific numbers for each category of revenues and costs and explains how the revenues and costs were derived and the sources. Verizon's purported margin analyses, therefore, deserve no weight.

has not deployed technology that allows customer's to electronically change from one local exchange carrier to another at no or minimal cost. Instead, the change requires manual "hot cuts" which are expensive and are often improperly implemented by Verizon.[9] Thus, UNE-L is, at least today, an unviable residential entry strategy in Vermont.

II. VERIZON'S VERMONT PERFORMANCE ASSURANCE PLAN CANNOT EFFECTIVELY DETER OR DETECT ANTICOMPETITIVE CONDUCT.

There is no sound basis for Verizon's assertion that the Vermont PAP approved by the VPSB contains self-executing mechanisms and sufficient "incentives to ensure that Verizon will continue to provide nondiscriminatory service pursuant to the 1996 Act after it has entered the long-distance market in Vermont." Guerard/Canny/Abesamis Decl., ¶85. The Commission has recognized that a factor in its public interest analysis set forth in Section 271 (d)(3)(C) is whether the Commission "ha[s] sufficient assurance that markets will remain open after grant of the application." *NY 271 Order* ¶ 423.[10] Although the Commission has not required an applicant to demonstrate the establishment of performance monitoring and enforcement mechanisms as a condition of Section 271 approval, it has noted that such mechanisms could "constitute probative evidence that the BOC will continue to meet its Section 271 obligations and that its entry would be consistent with the public interest." *Id.* ¶ 429; *see also Massachusetts 271 Order* ¶ 236.

Moreover, when an applicant relies on a performance enforcement plan to support its application, the Commission — as part of its "independent determination" — will review the

---

[9] *See, e.g.*, Comments of AT&T, *Verizon 271 Application for New Jersey,* CC Docket No. 01-347, at 23 (filed February 1, 2002).

[10] *See also, Texas 271 Order* ¶ 417; *KS/OK 271 Order* ¶¶ 267, 269; *Massachusetts 271 Order* ¶ 233.